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DANIEL *v.* DOUGHTY et al.

June 14, 1917.

[92 S. E. 848.]

1. Municipal Corporations (§ 671 (9)*)—Alleys—Establishment—Pleading—Duration of Period.—In a suit to determine the existence of an alleyway between certain town lots, an allegation in the bill that defendants "refused to open said alley as provided by said deeds, and have closed same," did not show on its face that defendants had held adversely for the statutory period.

[Ed. Note.—For other cases, see Municipal Corporations, Cent. Dig. § 1448.* 12 Va.-W. Va. Enc. Dig. 893.]

2. Municipal Corporations (§ 640*)—Town Plats—Alleyways.—Code, § 2510a, providing the manner of vacating in whole or in part plats of town lots, not being intended to prohibit the creation of new or additional ways or easements not shown on the original plat, is not violated by a decree establishing an alleyway as fixed in a conveyance executed after the plat was recorded.

[Ed. Note.—For other cases, see Municipal Corporations, Cent. Dig. § 1419.* 12 Va.-W. Va. Enc. Dig. 876; 16 Va.-W. Va. Enc. Dig. 1164.]

3. Deeds (§ 140*)—Alleys—Reservations.—Where the owner of lots in a recorded plat conveyed some of them, reserving an alleyway through the block, a purchaser takes subject to such reservations, and cannot thereafter contend that such alleyway was for the use of those not parties to the deed.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. §§ 453, 454, 460-462.* 4 Va.-W. Va. Enc. Dig. 439.]

4. Appeal and Error (§ 1075*)—Reservation of Grounds—Waiver.—Statement of counsel in oral argument that certain assignments are to be treated as waived, unless case is reversed on other grounds, is an express waiver of such assignments.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 4253.* 1 Va.-W. Va. Enc. Dig. 608, 609; 14 Va.-W. Va. Enc. Dig. 99.]

5. Easements (§ 36 (1)*)—Abandonment—Burden of Proof.—The burden of proof to show an abandonment of an easement is upon the party claiming such abandonment, and he must establish such fact by clear and unequivocal evidence.

[Ed. Note.—For other cases, see Easements, Cent. Dig. §§ 77, 78, 88, 89.* 4 Va.-W. Va. Enc. Dig. 864.]

Appeal from Circuit Court, Northampton County.

Suit by John H. Doughty against John T. Daniel and others

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

for an injunction. Decree for complainant, and defendant John T. Daniel appeals. Affirmed.

J. W. Topping and *John T. Daniel*, both of Cape Charles, for appellant.

John E. Nottingham, Jr., of Franktown, for appellees.

BRENARD MFG. CO. *v.* BROWN.

June 14, 1917.

[92 S. E. 850.]

1. Bills and Notes (§ 489 (5)*)—Pleading—General Issue.—In a suit on notes to the amount of \$600 given for a copyrighted advertising plan and certain goods and supplies to be used in connection therewith purchased under a written contract, the defense that independent of the special written contract there was a general agreement and under taking by the plaintiff to increase the defendant's sales for the year following the purchase of the advertising plan, and that, as no increase in fact resulted, there was a total failure of consideration, if sound, could be availed of under the general issue.

[Ed. Note.—For other cases, see Bills and Notes, Cent. Dig. §§ 1603-1610.* 2 Va.-W. Va. Enc. Dig. 495.]

2. Contracts (§ 204*)—Construction—Advertising.—Where, as a part of a special written contract for the sale of a general advertising plan and goods and supplies to be used in connection therewith, the seller gave his bond for a cash refund if the buyer's business was not increased to \$26,000, in the following year, which agreement was based on the buyer's false statements as to the amount of business he was doing, the buyer could not escape payment of the purchase-money notes on the theory of an independent general agreement and undertaking by the seller to increase the defendant's sales, although no increase in fact resulted.

[Ed. Note.—For other cases, see Contracts, Cent. Dig. § 916.* 3 Va.-W. Va. Enc. Dig. 401.]

3. Bills and Notes.—(§ 92 (1)*)—Consideration.—The buyer of a general advertising plan and goods and supplies to be used in connection therewith gave in payment notes to the amount of \$600. In an action on the notes undisputed testimony showed the sum of \$600 was a reasonable price. Held that, although the scheme contemplated giving away the articles of merchandise as premiums or prizes, as such articles and the services furnished by the plaintiff

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